

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GORDON D. SUTTON,

Plaintiff,

vs.

**JO ANNE B. BARNHART,
Commissioner of Social Security,**

Defendant.

Case No. 4:04CV1623 ERW (LMB)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This is an action under 42 U.S.C. § 405(g) for judicial review of defendant's final decision denying Gordon D. Sutton's application for disability benefits under Title II and Title XVI of the Social Security Act. The cause was referred to the undersigned United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636 (b). Currently pending is defendant's Motion to Remand (Document Number 5).

Defendant requests in her Motion to Remand that the court remand the cause to the Commissioner, who will remand the case to an Administrative Law Judge (ALJ). The ALJ will be directed to obtain plaintiff's subsequent claim file and to consider the evidence submitted with the subsequent claim to determine the impact of the favorable decision on the claim pending before this court.

Sentence six of 42 U.S.C. § 405(g) provides that "[t]he court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary . . ." After a remand under sentence six, the district court retains jurisdiction until the post-remand proceedings are completed and the Commissioner has

filed the results with the district court. See Shalala v. Schaefer, 509 U.S. 292, 298, 113 S.Ct. 2625, 2629 (1993).

This Court finds that it is appropriate to remand this case in order to permit the Commissioner to take the action requested in her motion. Without the evidence from plaintiff's subsequent claim, it would be difficult for the court to determine whether substantial evidence supports the Commissioner's decision. Defendant has shown good cause why remand is needed.

Accordingly,

IT IS HEREBY RECOMMENDED that defendant's Motion to Remand (Doc. No. 5) be **granted**.

IT IS FURTHER RECOMMENDED that this cause be **remanded** to the Commissioner for further proceedings pursuant to sentence six of 42 U.S.C. § 405(g) and that the court retain jurisdiction of the case and reserve final judgment until the parties have complied with the statutory post-remand requirements of 42 U.S.C. § 405(g).

The parties are advised that they have eleven (11) days in which to file written objections to this Report and Recommendation pursuant to 28 U.S.C. § 636 (b) (1), unless an extension of time for good cause is obtained, and that failure to file timely objections may result in a waiver of the right to appeal questions of fact. Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990).

Dated this 31st day of March, 2005.



LEWIS M. BLANTON
UNITED STATES MAGISTRATE JUDGE